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LAW AND LETTERS.*

A few days ago a very welcome invitation was extended to me to take part in these celebrations. I was called upon to address the Advocates' Association in connection with the celebrations and I was given the choice of the subject. I chose this particular one, 'Law and Letters' for a reason which may be familiar to some of you, but, which, I think, requires some explanation. Unlike some others at the Bar, I have not been a specialist in recondite branches of the law. It has not been given to me to share in those intenser raptures partaken of by those to whom law is not only a jealous but a peremptory mistress. Great men of that type have been amongst us and have flourished and shed lustre on the Bar. I remember the story of an illustrious lawyer who afterwards became a Judge, who, having seen a copy of Morley's Compromise on the table of a friend of his, wanted information as to whether the latest case was reported therein. I am not mentioning this for the purpose of detracting from the learning of that Judge but only for the purpose of illustrating my thesis that, to some, law comes with such a special and affectionate appeal that they will not allow literature to share the throne of their favourite deity. To me, law came as one of many things I felt impelled to learn At the beginning of my career, I thought of becoming, and I was disappointed in that I did not become, a teacher of English

* Address delivered by Sir C. P. Ramaswami Aiyar at the Golden Jubilee Celebrations of the Madras Advocates' Association on the 22nd February, 1939, under the Presidentship of the Hon'ble Justice Sir Abdur Rahman.

in the Presidency College and my first and foremost pre-occupation then was and always has been literature to the extent that the pursuit of literature was compatible with the exigencies of an exacting profession. Therefore, speaking to an august assemblage like the present, with an experience which is somewhat obsolete now, because the active practice of the profession is some years behind me, if I undertook to speak to you on the law or do what is even more daring, to expound unto you any legal subtlety, I shall be greatly daring and venturesome. It therefore occurred to me that I should strike the happy mean and speak as the gentleman who was asked to speak on "Chinese Metaphysics" did. Not knowing how to begin, he looked up the article on China in the Encyclopædia Britannica and also that on Metaphysics and combined the two into Chinese Metaphysics. Somewhat like that adventurous man I am going to speak to you on "Law and Letters" just now. But before I do so, I shall take you in retrospect to the giants of law here and elsewhere in India to whom it was given not only to be profound lawyers but also to be considerable men in matters appertaining to literary expression. In this Court we had Sir T. Muthuswami Aiyar, a person who owed everything to very carefully designed and disciplined self-education. That self-education involved not only the study of the law as expounded in treatises of English and Continental jurisprudence but also a study, painful, meticulous and exact, of the sonorous rhythms of the English language of the Victorian period. He began to learn these very late, but he mastered them. In his judgments you will find the style which was in vogue in those days, classical, somewhat ponderous but very accurate and expressive. His judgments in Hindu law cases, in cases connected with religious endowments and in various cases involving intricate points in Malabar law, were masterpieces. In them as in almost every other field of the law he brought to bear a cultural outlook while elucidating legal principles. In those days Judges had better chances than now of embarking on literary refinements because they had the leisure and the opportunities. It appears that in those days, on account perhaps of the lesser number of official and non-official reports and the absence of sudden and hasty delving into unreported judgments found in the record rooms for discovering apposite precedents, it was possible for Sir T. Muthuswami Aiyar to resort to great books and evolve first principles. He

was perhaps the most illustrious of the Madras Judges and he along with some others like Sir S. Subramanya Aiyar, Mr. Sundara Aiyar, Sir T. Sadasiva Aiyar and Sir C. V. Kumaraswami Sastri took trouble over their language. A galaxy of legal talent lent distinction to Madras and put it at least on a par with any other High Court. There were also Englishmen like Justices Turner and Innes and Holloway. Perhaps only next after Sir T. Muthuswami Aiyar came Sir S. Subramanya Aiyar. He was as emphatic in style as his very attitude and appearance, full of emotion and apt to be filled with generous impulses and occasional flashes of indignation. When he was able to get enough leisure, he wrote judgments which for their aptness of style and epithet ranked with the foremost examples of the juristic art. Then came many great men like Sir V. Bashyam Aiyangar to whom language was a painful necessity and a refractory instrument for expressing the subtlety of legal exploration; and the intricacies of the legal language were like hard granite to be chiselled out in sharp and often unornamental outline. Probably, in recent times, the greatest master of legal exposition in India was Mr. Justice Mahmood. Those who have read the Allahabad Reports of the early days know that, whether he dealt with adjective law and its relation to substantive law, or whether he spoke in relation to the idea of adoption of an only son, whether he expounded and quoted from the Islamic authorities or the Smrithis or whether he insisted upon the rights of individuals against the State, there was the lambent style and the force and dignity of exposition. Wherever his mind travelled, whatever his hand touched, he adorned with his sense of style, with his knowledge of the Sanskrit language which he learnt with great trouble, with his knowledge of Persian and Arabic and his culture in many European literatures which he owed to the very careful discipline he underwent at the instance of his great father. Justice Mahmood was an excellent example of the art of legal expression in apt language. Then we come to lawyers like Telang and Ranade and the Mitters and Gurudas Banerjea and Sir Ashutosh Mukerji, who, when they chose to, could and did write fine and expressive judgments. Sir Ashutosh was a master of many sciences and arts and he rose to such supremacy in the exposition of case-law that it did not matter to him very often whether he wrote exemplary English or not. But

when he wanted, he *could* write with vigour and terseness of expression and some of his judgments are specimens of good English. Perhaps Dr. Rash Behari Ghosh was facile princeps in India as a literary lawyer and in a rare degree there was united in him a thoroughness of many-sided culture and grasp of legal truth with the facility of happy expression for the like of which you must go to the great English, French and American Jurists. He was able to put legal principles in language at once accurate and illuminating. And of course, J.D. Mayne and his work on Hindu law cannot be lost sight of. But if one had to study good English, as well as good law, one could do no better than explore that wonderful mine—Moore's Privy Council Judgments. The Judges who presided over the Privy Council in the 19th century were giants of law and their language was always above criticism. They were very thorough and very accurate. But behind and above all that, there was a patient research and a freedom from turmoil, literary or legal, either imposed from within or from without, and an exposition which can be compared only with the best specimens of literary art.

Now, to go back to the beginning, I am going to address you for some time on Law and Letters, but before I do so let me recall to your minds one or two excerpts from those who have attempted a similar task. In order that I may not be behind the times, I have brought some of my authorities with me. But I may assure you that I have not followed my own previous example, especially when I was opposing my friends at the Bar like Mr. V. V. Srinivasa Aiyangar and Sir Alladi. I often used to keep my authorities underneath the table, to be used only as torpedoes in case of need.

Giving evidence before a Royal Commission, Lord Fitz Gibbon stated that "the knowledge of a lawyer is the acquiring of superficial knowledge quickly for use of a temporary kind". What he meant was this. As a lawyer one may have to deal with a nautical question to-day, and one may have to speak on the ocean currents. Mr. Justice Varadachariar, who is present here and who is in the midst of his Federal transmigration, may have very soon to listen to elaborate expositions of the conflicts between States jurisdiction and Central jurisdiction. I may have to make it appear before the judge that all my life I have been reading nothing but the nautical almanac and the principles of Hydrodynamics. To-morrow I may have to deal with medical

or engineering problems and exhibit a facile, if superficial, knowledge of technical minutiæ. All the time, moreover, the lawyer must be an apt commentator and a critic of language. The great point of the lawyer is that he must forget almost sooner than he learns, because if he keeps in his mind all that he learns, he will go mad. He must first of all appear to know all that he is talking about and secondly he must replace this temporary knowledge with other categories of learning. That is exactly what Lord Fitz Gibbon meant. The style of legal address now is very different from what it used to be. Even in my younger days there was not developed that very telegraphic and very utilitarian style which is forceful but not always elegant and which is characteristic of to-day. What is often done is simply to quote a few cases from out of reports and then ask for a judgment. The advocate on the other side quotes something else and the argument deals more with numerals and interjections than with exposition. In those days there were men like Mr. Norton who, although he unwillingly quoted authorities sometimes, always spoke sparkling English. Mr. Norton also often lost his cases by reason of his neatly expressed and sometimes stinging jokes. If it was possible to make a joke at the expense of a judge or a witness he could never refrain from it. It was from him that I first heard the witticism "The extreme penalty for bigamy is to have two mothers-in-law". He once repeated before a local court the historic joke of Curran, the great Irish lawyer who was speaking before a pretentious judge. The judge was dogmatic and said "Sir, if that is the law, I would burn my law books". Curran took the ball at the rebound and said "Why not read them, My Lord". I remember a similar remark being made by Mr. Norton in the Sessions Court to a particular judge. Naturally he lost his case. The present position is that a combination of what you might call literary excellence is not associated with the legal career because we are all in a great hurry now. We must finish a certain number of cases within a certain fixed period as Governments call upon the Courts to submit certain returns and the question of arrears arises. And further the multiplicity of reports and precedents is not conducive to a cultivation of individual style. It needs some leisure to be able to polish your phrases. When a lawyer of the old days was elaborately perorating on the doctrine of warranty and on the question of

damages when certain bags of oil-seeds were short-delivered, Justice Day said: "Yes; there may be full-bags and half-bags and also wind-bags". We are too afraid of the last criticism. Thus before the lawyer begins his *'alapana'* he is asked to be short.

Now, I propose to talk to you for a few moments of what has been the literary appraisal of the law, what the literary man has thought of the law and what the lawyer has been as a literary man. So far as the first portion is concerned, the task is very easy. The lawyer has too often been the butt of the author and the artist. It was decided—the case is referred to in a note in 14 Madras Law Journal at p. *272**—that the lawyer had a right to shed tears! The point arose in this way. The lawyer tried to argue. He made in his argument extravagant gestures and appealed to the jury. But the jury were obdurate. The question about his right to appeal to the sentiments and passion of the jury arose and it was decided after lunch that the shedding of a few well-chosen tears was not a contempt of Court. History does not chronicle the result. Similarly Lamb referring to the great Roman lawyers justified what may be called bringing the *corpus delicti* in the Court. The Romans used to wear a toga similar to our gowns. In a particular case the question related to infanticide and after the normal arguments in the case, the lawyer dramatically took the infant's body from beneath the folds of his toga and appealed to the Jury to acquit the accused because the infant was alive and kicking. The question was very simple for the Judges. These are instances used to show that the lawyer would go to any lengths to succeed in his cause.

In Chaucer we find the lawyer who is full of tricks. Then we come to Shakespeare who was a lawyer by instinct. Lord Penzance in a brochure has stated the reasons compelling him to the conclusion that Shakespeare must have been bred up in an attorney's office. As he knew so much about conveyances and not only the language, but the spirit of the law was so familiar to him, that Lord Penzance favoured the view that Bacon must have been the author of the Shakespearean dramas. But Lord Penzance apart, there is no question that speaking generally Shakespeare was not particularly partial to the lawyer. Portia in the Merchant of Venice, the first female lawyer in English literature was an exception but I

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* The Lawyers Lachrymal rights.

am afraid was undoubtedly guilty of bad law. I am speaking subject to correction. Her pleading was entirely against the right theories of alienation and conveyance. The question arose in the case argued by her whether a person who had under a contract the right to cut off a certain portion of the flesh from the human body had a right to draw blood. Persons who know personal or real property law, know that whatever is given by means of a document, is given with all the necessary easements, benefits and appurtenances and the requisite blood and flesh must have passed together under the document. Anyhow Portia's bad law held the field and we have got it chronicled in one of the masterpieces of European literature. In Henry IV, Falstaff was guilty of the violation of the prohibition laws and he was admonished by the Lord Chief Justice. Falstaff was a great friend of the Prince of Wales and he boasted that the laws of England were at his beck and call. The Lord Chief Justice upheld the majesty of the law and condemned him to the *Fleet Prison.* This same Lord Chief Justice had proceeded against and sermonised Henry V when he was Prince of Wales, and for his action, instead of being dismissed as he well might have been, he was greatly praised by the then sovereign of the country. Barring then Portia in the Merchant of Venice and the Lord Chief Justice In Henry IV, Shakespeare practically treats a lawyer as a bad specimen of humanity. Generally speaking a lawyer in Shakespeare is a designing and rapacious person, although we lawyers know that he has never been so. Crabbe describes a lawyer as "a peacemaker who keeps in awe contending parties by threats of law." His is one of the sympathetic legal portraits but Justice Greedy in Massinger's "New way to pay old debts" is a typical picture of a hard-hearted and corrupt lawyer.

It is a very curious thing and the point is worthy of investigation by some research student that a man when he succeeds in the law, becomes a dry-as-dust person. At the same time it is true that many eminent literary men have approached the portals of the law but have not succeeded in getting entrance. Bacon, Macaulay and Sir Henry Maine are exceptional cases. Scott, Dickens, Thackeray and Boswell were confessed failures at the Bar. Disraeli, for instance, joined the Gray's Inn. But we find that he wrote to the authorities of the Gray's Inn that he was chronically ill and that he could not afford to

keep his name on the rolls and so his name was struck out. Seven years after Gladstone was enrolled, his other avocations were so engrossing that he could not pay attention to law and his name was removed. Thus two of the foremost Parliamentarians were unsuccessful barristers. Scott was, as is well known, a scrivener. He is the only man excepting Crabbe who has more or less uniformly written well of the lawyer and his Mr. Pleydell is one of the finest illustrations of the good, kind, benevolent and acute lawyer. Recently some of the great figures in politics have been successful lawyers as for example Asquith, Haldane, Llyod George, Birkenhead, Reading, Carson and Sir Edward Clarke, Simon.

When we come to later literature, there are Dickens and Thackeray. Dickens was a man who tried many things and he learnt a great deal of law by the force of circumstances. But of him it may be said that neither he nor Thackeray has been antipathetic or ungenerous to the lawyer. The attorney in Pickwick pretending friendship with the Lord Chancellor, Serjeant Buzfuz with his chops and tomato sauce, Serjeant Snubbin and many others are instances in point, as well as David Copperfield himself. In the continent the case is worse. In Moliere, Voltaire and Balzac we find the lawyer portrayed as a person full of wiles and tricks and greedy and unscrupulous. It is nevertheless an outstanding fact that very few persons of great eminence in European literature have been found to be without some grounding in the law. Robert Louis Stevenson, one of the most attractive of recent writers and a master of prose, attended some lectures in Roman Law in a Scottish University. Students of Roman Law know what emphyteusis and stillicide mean. The former is a kind of land tenure while the latter is an easement of necessity. Stevenson who attended these lectures summarises his knowledge as amounting to nil as he was not even certain whether emphyteusis was not a disease and stillicide a crime like matricide or fratricide. After having undergone this kind of legal apprenticeship Stevenson emerged as a polished writer of English prose and a splendid writer of ballads. I venture to attribute to his legal training, his accurate thinking and clear narrative. An American lawyer describes what legal culture, and legal training can do and what its value is. What he says is:

"Modern sermons, debates in the House, newspaper leading articles and correspondence have a certain note of pompous futility which point too

clearly to a growing lack of intellectual discipline and a sad ignorance of logic. The law Courts at least preserve a sort of intellectual gymnasium the efficiency of which is perhaps best advertised by the objurgations of those who wish to solve every political problem by the short cut of violence."

Whether it is for a life of letters or for a life devoted to the arts, a legal training, the habit of marshalling your ideas, the habit of putting first things first and last things last, the habit of analysis and the habit of classification have got their undeniable advantages. Legal knowledge is of the utmost value in the conduct of public and administrative life. Lord Haldane is an illustrious example in recent times. He combined in himself a profound knowledge of philosophy, of law and letters and he was further a man of action in the real sense of that term. He it was who reorganised the English Army amidst obloquy and calumny until at last he was practically hounded out of his place in the Cabinet. It took ten years for the people to realise his great services but he surely owed to the law that versatility and that strenuousness which enabled him to familiarise himself with military matters and to prepare England for the War of 1914. To him these lines of Kipling may well be applied:

"If you can dream and not make dreams your master
"If you can think and not make thoughts your aim
"If you can meet with triumph and disaster
"And treat those two impostors just the same," etc., etc.

To obtain such an outlook, legal training is a great aid. We have very little evidence in ancient Indian literature as to the place of the law and the training of the lawyer and his position in the polity of the different ages, but we have glimpses here and there of the value attached to immutable law. The idea of Ṛitha, the idea of Dharma, were ideas akin to the fundamentals of the Roman Law. The deity is regarded essentially as a law-giver and often an omnipresent witness. Let me bring to your mind what the Atharva Veda says:

यस्तिष्ठति चरति यश्च वञ्चति यो निलायं चरति यः प्रतङ्कम् ।
द्वौ संनिषद्य यन्मन्त्रयेते राजा तद्वेद वरुणस्तृतीयः ॥

"Who stands, who moves, who goes crookedly, who goes stealing this way, who lives desparately, what two, sitting together, conspire (all) that, Varuna, as the third knows."

In Greece and Rome law and life were interdependent and the idea of law as the energising, fertilising element in all true culture was ever present. Cicero, Demosthenes and the great jurists who found the Jus Civile were the progenitors of Machia-

velli, Grotius, Puffendorff and Savigny and of Napoleon's Code; and the glory of Rome is that law and the practice of the law went hand in hand with oratory and the sedulous cultivation of style in the spoken and written word.

So far as we are concerned, our Dharma Sastras and later on the great Smrithis and still later Kamandakeeya, Kautalya's Artha Sastra—all these were not great works of literary art, but they developed a special style of their own—succinct and clear and free from ornament or floridity.

In Greece, thanks to the circulation of public offices, everybody in the City States may be plaintiff, everybody was likely to be defendant and everybody had to be a Judge. The link between law and letters was profound, intense and continuous. Nowadays there is not much reference either to Demosthenes or Cicero and so I shall, with your leave give you an idea of the kind of arguments which were heard in those days. I may instance Demosthenes' Orations against Philip of Macedonia which gave rise to the term Phillipic. Here is an example:

"As to the defeat, that incident in which you so exult! (accursed wretch! who should rather mourn for it!). Look through my whole conduct, and you shall find nothing there that brought down this calamity on my country. Let it be considered that there is no one instance in which the ambassadors of Macedon ever prevailed against me, in any of those states where I appeared as the ambassador of Athens—not in Thessaly, nor in Ambracia, nor in Illyria, nor among the Thracian princes, nor in Byzantium, in no one place; no, nor in the last debate at Thebes But whatever was thus acquired by my superiority over the ambassadors of Philip, their master soon recovered by force of arms. And this is urged as my offence. My adversary, even at the very time that he affects to ridicule my weakness, is so shameless as to require, that I in my single person should conquer all the powers of the Macedonian, and conquer them by words. What else could I command? I had no power over the life of any one citizen, over the fortune of our soldiers, or the conduct of our armies, for which thou art so absurd as to call me to account. In every particular where a minister is accountable, there let your scrutiny be strict and severe I never shall decline it. And what are the duties of a minister? To watch the first rise of every incident; to foresee; to forewarn his fellow citizens. And this did I perform. To confine those evils within the narrowest bounds, which are natural and necessary to be encountered in every state; to restrain the fatal influence of irresolution, supineness, prejudice, and animosity; and, on the other hand, to dispose the minds of men to concord and unanimity, to rouse them to a vigorous defence of their just rights. All this did I perform; nor can an instance be produced in which I proved deficient. If a man were asked what were the means by which Philip effected most of his designs; the answer is obvious: It was by his armies, by his bribes, by corrupting those who were at the head of affairs. As to his armies, I neither commanded nor directed them. I am not, therefore, to account for any of their motions. As to his bribes, I rejected them. And in this I conquered Philip; for, as the purchaser conquers when a man accepts his price,

and sells himself; so, the man who will not be sold, who disdains to be corrupted, conquers the purchaser. Well, then, with respect to me, this state remains still unconquered.

His oration on the Crown was an attempt made by him to accomplish the union of Greece for the defence of independence. Here is another example:

"There are two distinguished qualities, Athenians, which the virtuous citizen should ever possess (I speak in general terms, as the least invidious method of doing justice to myself) a zeal for the honor and pre-eminence of the state in his official conduct; on all occasions, and in all transactions, an affection for his country. This nature can bestow. Abilities and success depend on another power. And in this affection you find me firm and invariable. Not the solemn demand of my person; not the vengeance of the Amphictyonic council, which they denounced against me; not the terror of their threatenings; not the flattery of their promises; no, nor the fury of those accursed wretches whom they aroused like wild beasts against me could ever tear this affection from my breast. From first to last, I have uniformly pursued the just and virtuous course of conduct; assertor of the honors, of the prerogatives, of the glory of my country; studious to support them, zealous to advance them, my whole being is devoted to this glorious cause. I was never known to march through the city with a face of joy and exultation at the success of a foreign power; embracing and announcing the joyful tidings to those who, I supposed, would transmit it to the proper place. I was never known to receive the successes of my own country with tremblings, with sighings, with eyes bending to the earth, like those impious men who are the defamers of the state, as if by such conduct they were not defamers of themselves; who look abroad, and, when a foreign potentate hath established his power on the calamities of Greece, applaud the event, and tell us we should take ever[illegible]ans to perpetuate his power.

"Hear me, ye immortal g[illegible]! let not these their desires be ratified in heaven! Infuse a better spirit into these men! Inspire even their minds with purer sentiments! This is my first prayer. Or, if their natures are not to be reformed; on them, on them only discharge your vengeance! Pursue them both by land and sea! Pursue them even to destruction! But to us display your goodness in a speedy deliverance from impending evils, and all the blessings of protection and tranquillity!"

Cicero in his orations against Catiline and Marcus Antonius and in defence of Mylos has afforded wonderful examples of forensic eloquence. Prosecuting Verres for criminal breach of trust he indulges in the following language:

"Oh, for the good faith of gods and men! What is the meaning of all this? What a cause is this? What impudence is this? The statues which I am speaking of, before they were taken away by you, no commander ever came to Messana without seeing So many praetors, so many consuls as there have been in Sicily, in time of peace, and in time of war; so many men of every sort as there have been—I do not speak of upright, innocent, conscientious men, but so many covetous, so many audacious, so many infamous men as there have been, not one of them all was violent enough, or seemed to himself powerful enough or noble enough, to venture to ask for, or to take away, or even to touch anything in that chapel. Shall Verres take

away everything which is most beautiful everywhere? Shall it not be allowed to any one besides to have anything? Shall that one house of his contain so many wealthy houses? Was it for this reason that none of his predecessors ever touched these things, that he might be able to carry them off? Was this the reason why Caius Claudius Pulcher restored them, that Caius Verres might be able to steal them? But that Cupid had no wish for the house of a pimp and the establishment of a harlot; he was quite content to stay in that chapel where he was hereditary; he knew that he had been left to Heius by his ancestors, with the rest of the sacred things which he inherited; he did not require the heir of a prostitute. But why am I borne on so impetuously? I shall in a moment be refuted by one word. 'I bought it', says he. O ye immortal gods, what a splendid defence! We sent a broker into the province with military command and with the forces, to buy up all the statues, all the paintings, all the silver plate and gold plate, and ivory, and jewels, and to leave nothing to anybody. For this defence seems to me to be got ready for everything; that he bought them. In the first place, if I should grant to you that which you wish, namely, that you bought them, since against all this class of accusations you are going to use this defence alone, I ask, what sort of tribunals you thought that there would be at Rome, if you thought that any one would grant you this, that you in your praetorship and in your command bought up so many and such valuable things—everything, in short, which was of any value in the whole province."

So far I have been discussing what may be called the general reaction of literature on law. Now, I propose to conclude what I have to say with the mention of some of the great lawyers who have produced things which are worth reading and what are contributions to literature "properly so-called." The first of them, so far as England is concerned, is Sir William Blackstone to whom fine tributes have been paid by Fox and Gibbon and Lord Mansfield and of whom Bentham said that he was the first man who taught Jurisprudence to speak the language of the scholar and gentlemen. One of his most illustrious disciples was Abraham Lincoln. Another was Austin to whom we owe a treatise which is more thorough than beautiful but which has had a profound influence on law and society. Next comes Jeremy Bentham himself. He was responsible for a tremendous stimulus to legal reform and as Sir James Fitz James Stephen said, his rationale of evidence was a shell bursting in a power machine. His influence on writers like Bryce was very great. Smith's Leading Cases, although not a great literary treatise, brought home to lawyers in England the underlying principles of the law and this treatise was the precursor of Story and Marshall.

An English politician and lawyer of the 18th century called Arbuthnot wrote a book entitled "Law, a Bottomless Pit". It was a kind of pamphlet in which he denounced an impending

war against France. It was one of the very first treatises on international peace and is remarkable also for its literary quality. Nicholas Frog, John Bull, and Lewis Baboon typifying France, England and Holland are represented as litigants who spent all their money in a law suit. "A lawyer without history of literature is a mechanic, a mere working mason. If he possesses some knowledge of these he may venture to call himself an architect". These are the words of Pleydell, the most attractive lawyer portrayed in Scott's Waverley Novels. One of the greatest literary lawyers in England was Sir Thomas Moore, the writer of Utopia. He outlined doctrines of political economy which are very different from some of the doctrines which are now current in the world and that book is worth studying on the doctrine of politics as well as in what may be called the art of writing simple and cogent English. Then, of course, we have one who has been called the greatest and meanest of men and who was at his best as a writer when he was under trial for corruption and bribery—Francis Bacon. His speeches in defence of the charges against him are literary gems, and his Essays stand in a class apart. May I quote just a few words showing legal English at its best—concise, clear, inspired and suggestive:

"Preserve that right of thy place, but stir not questions of jurisdiction; and rather assume thy right in silence, and *de facto*, than voice it with claims and challenges. Preserve likewise the rights of inferior places; and think it more honour to direct in chief than to be busy in all."

"The vices of authority are chiefly four: delays, corruption, roughness, and facility. For delays give easy access; keep times appointed; go through with that which is in hand, and interlace not business but of necessity. For corruption, do not only bind thine own hands or thy servant's hands from taking, but bind the hands of suitors also from offering; for integrity used doth the one; but integrity professed, and with a manifest detestation of bribery, doth the other; and avoid not only the fault, but the suspicion. Whosoever is found variable, and changeth manifestly without manifest cause, giveth suspicion of corruption; therefore, always when thou changeth thine opinion or course, profess it plainly and declare it, together with the reasons that move thee to change, and do not think to steal it. A servant or favourite, if he be inward and no other apparent cause of esteem, is commonly thought but a byeway to close corruption. For roughness, it is a needless cause discontent; severity breedeth fear, but roughness breedeth hate. Even reproofs from authority ought to be grave, and not taunting. As for facility, it is worse than bribery; for bribes come but now and then; but if importunity or idle respects lead a man, he shall never be without: as Solomon saith: 'To respect persons is not good; for such a man will transgress for a piece of bread'!"

His was probably the finest example of legal writing. It is wonderful to contemplate that confronted with implacable adversaries and in the midst of turmoils he was able to hew his words and chisel his phrases. Lord Clarendon the historian and the friend of Ben Johnson and Seldon, Lord Jeffrey who edited the Edinburgh Review, and attacked impartially Wordsworth, Keats, Byron and Scott, Lord Brougham who has been caricatured by Samuel Warren in Ten Thousand a Year and by Peacock were other notable literary lawyers of whom the latest were Lords Campbell, Selbourne, Coleridge, Macnaughten and Darling. Lord Mansfield one of the brightest ornaments of the English Judiciary was the founder of the English Commercial law and the 'Law Merchant' as Lord Stowell was the founder of Maritime law. Both in his judgments and in his *obiter dicta* you will find finished examples of clarity of expression and elegance of thought. Mansfield was one of the greatest of English orators and his speech on the Right of Taxing America is a classic. Abraham Lincoln, Daniel O'Connell, Patrick Henry and Daniel Webster, in addition to being great lawyers were also some of the greatest orators who used the English language. I do not know whether any of you have read O'Connell with regard to the rights of the Catholics. He has displayed not only profound knowledge of the law but oratory the like of which has not been often heard in England if we except the speeches of Burke and Sheridan. Then we come to Macaulay who, in addition to being an orator, was also an administrator and was responsible for a piece of splendid codification—the Indian Penal Code—a good example of accurate and cogent English prose. In the continent wherever there is codified law there seems to be much more scope for great eloquence. It is worthy of remark that the French and generally speaking the continental legal system as well as the American Courts have tended to produce great and impassioned advocates and stylists. Great as have been the contributions of Hardwicke, Erskine, Romilly, Cockburn, Herschell, Cairns, Selborne, Halsbury, Lushington and Birkenhead in some of the Prize Court cases and Bowen and Fletcher Moulton in some of their notable judgments they are eclipsed by Lincoln, Henry, Ames, Story, Webster, Choate and the French and Spanish advocates of whom one of the most eminent was Senor Castelar whom Gladstone called the greatest orator he had heard next to Mrs. Annie Besant. The greatest specimens

of English eloquence are perhaps to be found in the writings and the speeches of the American orators and in the judgments of Chief Justice Marshall and Justices Story and Holmes. I would like to invite special attention of members present here to Webster's reply to Hayne dealing with the limits of the jurisdiction of the State Government and the Central Government.

Thus, therefore, we find that so far as Europe and America are concerned, whereas men of letters have been rather jealous of the law and whereas they have been using the lawyer as a butt and as a victim of caricature, as enemies or at the best as parasitic members of society, the lawyer and the Judge have made great contributions both in judgments and philosophical thought to the onward march of the oratorical and literary procession in both the countries. I can claim therefore that law and letters have been intermingled in the history of the world. All through the history of the world there have been lawyers and judges who by their knowledge and practice of literature have enriched what may be called the idioms and the genius of their several languages in addition to enriching the legal lore of the countries. Long may law continue as the handmaid or rather the familiar companion of the arts and literature so that law as a philosophy of life, as a balancing force in human existence and as a regulating and dynamic factor in human society may not be divorced from but may be united with all varieties of that basic and essentially spiritual ideal which beautifies, enlightens and ennobles human life.

SUMMARY OF ENGLISH CASES.

In re CLEADON TRUST, LTD., (1939) 1 Ch. 286.

Company—Advance of money for benefit of company—Liability of company to the person advancing.

The secretary of a company wholly without authority procured one of the directors to provide money to pay to persons who were entitled to the payment of the moneys from a subsidiary company. The company had given guarantees to the payees and the effect of the provision of money by the director was, the debt so guaranteed was discharged and on the date of the liquidation the guarantee had ceased to be operative. A resolution by directors confirming the advances was bad for want of *quorum*. The present application

was by the director to rank as a creditor for the sums advanced. Bennet, J.; rejected the application in 1938 Ch. 660. On appeal,

Held (per *Scott* and *Clauson*, *L.JJ.*, *Greene, M.R.*, dissenting), the mere fact that the applicant made payments which enured to the benefit of the company did not establish an equity in his favour against the company to have recoupment from their funds.

In re KAY'S SETTLEMENT: BROADBENT *v.* MACNAB, (1939) 1 Ch. 329.

Settlement—Covenant for settlement of after-acquired property—Beneficiaries if volunteers—Trustees if can compel specific performance or recover damages.

The trustees of a voluntary settlement asked for directions whether they shall take any and if so what proceedings to compel the performance by the settlor of a covenant contained in that settlement or to recover damages for failure to implement the covenant.

Held, the beneficiaries were volunteers with no right to obtain specific performance of a mere covenant. The trustees should not take any steps either to compel performance of the covenant or to recover damages through the settlor's failure to implement it.

SHARPE *v.* TOPHAMS, LTD., (1939) 1 Ch. 373.

Company—Right of member to obtain split share certificates.

Held, on a construction of the articles of association, that a shareholder is entitled to call for his certificate to be split.

CARPENTER *v.* EBBLEWHITE AND OTHERS, (1939) 1 K.B. 347.

Practice—Third party procedure—Claim against owner of motor car for negligent driving—Insurance Company added as third party—Possible liability of plaintiff—Declaration if can be made—If will embarrass the trial.

The plaintiffs were injured in a collision between their motor-cycle and a motor-car, registered in the name of *E* one of the defendants, driven by *B* the other defendant. The plaintiffs alleged that *B* was the servant or agent of *E* or in the alternative. *E* permitted or authorised *B* to drive the car and that the accident was due to the negligent driving by *B* for which *E* was liable. Plaintiffs were allowed to add *E's* insurers as a defendant. Plaintiffs then in the original statement of claim asked for a declaration against the insurance company that it is obliged to satisfy any judgment obtained by any of the plaintiffs against *E* or *B*. The defendants took out a summons to strike out the statement of claim relating to the insurance company as disclosing no reasonable cause of action

and being vexatious and embarrassing and *E* gave evidence that the car had been sold before the accident to *B* and the insurance company claimed that as *E* had sold the car and they had not insured *B*, they were not concerned with the matter as insurers of either *E* or *B*.

Held, the statement of claim for declaration ought to be struck out.

Per *Greer, L.J.*—The claim against the insurance company ought not to be entertained as there was not yet in existence any dispute between the parties on the only question between them and it will be embarrassing.

Per *Slesser, L J.*—The disclosure to the jury of the defendants insurance might tend to prejudice or embarrass the fair trial of the action.

Per *MacKinnon, L.J.*—The right to make declarations is discretionary and the right is primarily designed to deal with declarations of liability on questions of law. There is no question of law as to possible liability of the insurance company.

GREENWOOD *v.* ATHERTON, (1939) 1 K.B. 388.

Public Authorities Protection Act (1893), *S.* 1—*Managers of a non-provided school—If public authority.*

The managers of a public elementary school governed by Education Act (1921) in providing and controlling a playground (where an accident occurred to the plaintiff) were acting in pursuance or execution of the Education Act and an action not commenced within the time limited by the Public Authorities Protection Act for damages for accident must fail.

OWENS *v.* LIVERPOOL CORPORATION, (1939) 1 K.B. 394.

Tort—Mental or nervous shock—Right to recover damages—If apprehension of injury to human safety necessary.

A hearse carrying a coffin containing a corpse was followed by a carriage in which were the plaintiffs who were the mother of the deceased, an uncle, a cousin, and the cousin's husband. A tramcar negligently driven by a servant of the defendant collided with the hearse and overturned the coffin. In a claim for damages for negligence against defendants it was found that "the plaintiffs did receive injuries in the nature of shock to a varying degree from the actual sight of damage to the hearse containing the body of a near relative" but the action was dismissed on the ground that in law there must be apprehension of injury to a human being, or actual sight of injury to a human being before a plaintiff can recover damages. On appeal,

Held, the right to recover damages for mental shock caused by the negligence of a defendant is not limited to cases in which apprehension as to human safety is involved and the plaintiffs are entitled to damages. One who is guilty of negligence must put up with idiosyncracies of his victim that increase the likelihood or extent of damage to him (damages of 75*l*. for the mother, 15*l* for the uncle, 100*l*. for the cousin and 11*l*. for the cousin's husband were allowed).

INLAND REVENUE COMMISSIONERS *v.* KERED, LTD., AND OTHERS, (1939) 1 K.B. 402.

Income-tax—Surtax—Finance Act (1936) *S.* 20, *sub-S.* (4) (*b*) *—Actual gross amount expended in discharge of loan capital of company—If can be apportioned to loan creditors—If more than the sum due on the loan can be apportioned to such creditors if income of company is sufficient.*

Where the question arose whether the special commissioners can apportion to loan creditors the gross of the actual amount of income which has been expended in discharge of their loan capital and whether they can apportion to such loan creditors more than the sum due on the loan if the income of the company is sufficient,

Held, the natural meaning of the sub-section is that the commissioners can apportion to loan creditors the actual amount expended or which might have been expended in redeeming their loan capital and the commissioners cannot apportion to the loan creditors more than the sum due on the loan.

CHISHOLM *v.* LONDON PASSENGER TRANSPORT BOARD, (1939) 1 K.B. 426.

Tort—Contributory negligence—Pedestrian crossings—Collision—Defendant's driver guilty of breach of statutory duty—Plaintiff's contributory negligence.

Plaintiff stepped from the kerb on to a pedestrian crossing on a road a short distance in front of defendants' bus, the driver of which was unable to avoid a collision with plaintiff and the plaintiff was injured.

Held (*Scott* and *MacKinnon, L.J.*, *du Parcq, L.J.*, dissenting), distinguishing *Bailey* v. *Geddes*, (1938) 1 K.B. 156, if a pedestrian suddenly steps on to an empty crossing so as to embarrass a car which has come quite close and thereby causes or contributes to a collision he has only himself to blame and the driver is under no liability to him for the consequences. The breach of statutory regulation by the defendant does not bar the defence of contributory negligence.

BAILEY *v.* HOWARD, (1939) 1 K.B. 453.

Tort—Damages for loss of expectation of life.

In an action by the father, as personal representative, for damages for loss of expectation of life of his daughter aged three the jury awarded £1,000. On appeal,

Held, the net result of the cases is that it is left to the appreciation of the jury to fix a figure and the amount to be given should be strictly reasonable and if it errs at all it should err on the low side. The damages recoverable by the personal representative is not reduced by the death of the victim.

KEARRY *v.* PATTINSON, (1939) 1 K.B. 471.

Tort—Conversion—Plaintiff's bees escaping into defendant's garden—Plaintiff's right to follow—Extent—Bees if chattels—Claim for conversion—Sustainability.

Plaintiff's bees escaped into defendant's land and defendant refused the plaintiff entry on his land for recovering the bees. The bees were lost. In a claim for the value of the bees lost,

Held, bees are *feroe naturae*. When hived they are taken into disposition of the owner and became his property and remain his property, so long as they are in his sight and he has legal power to pursue them. When the bees escape from plaintiff's land the right to follow ceases and until hived again, cannot be considered to be anybody's chattel. Therefore no action can be maintained for conversion.

HIBERNIAN BANK, LTD. *v.* GYSIN AND HANSON, (1939) 1 K.B. 483.

Bill of exchange—Payable three months after date to order of payee only—"Not negotiable" written across—Effect on negotiability.

The bill was drawn by the Irish Casing Co., Ltd., upon and accepted by the defendants payable at Barclay's Bank. The bill provided that three months after date to the order of the Irish Casing Co., Ltd., only, the sum of £500 effective value received shall be the sum payable and across it were written the words "not negotiable". The plaintiff claimed as holders for full value. The payee owed the acceptor a larger sum on the due date which they claimed to set off. The bill when presented was dishonoured. The acceptors pleaded that the holders had no title to sue as the bill was not negotiable.

Held, the instrument remains a non-negotiable instrument drawn by the Irish Casing Co., Ltd., and accepted by the defend-

ants but limited as to the effect as between those two parties and it is not transferable.

(1938) 2 All.E.R. 575, affirm.

SIMONS *v.* SIMONS, (1939) 1 K.B. 490.

Foreign decree of divorce a nullity for want of jurisdiction—Order for payment of maintenance by such decree—If enforceable.

Where a decree, whether for dissolution of marriage or for nullity is made without jurisdiction an order for maintenance falls with the decree. If the main order goes, then any order which is merely ancillary to that order should go with it.

COHEN *v.* LESTER (J.), LTD., (1939) 1 K.B. 504.

Moneylenders Act (1927), S. 6—Moneylender—Money lent on security of jewellery deposited—Contract unenforceable owing to non-compliance with S. 6 of Moneylenders Act—Borrower's right to return of jewellery without payment.

Plaintiffs borrowed from defendants who were registered moneylenders, on the security of some jewellery which she deposited with them. The contract and security were unenforceable owing to non-compliance with provisions of s. 6, Moneylenders Act and plaintiff claimed a return of the jewellery.

Held, the defendants are not entitled to keep the jewellery and enforce payment. A distinction must be drawn between a contract which was illegal [as in (1907) 1 Ch. 302] and a case like the present where the contract is unenforceable.

DANN *v.* HAMILTON, (1939) 1 K.B. 509.

Negligence—Consent—When and how far a defence.

Plaintiff voluntarily became a non-paying passenger in a car and even after knowledge that the driver was not sober and in spite of opportunities to get down continued to travel in the car. In an accident that followed the driver was killed and the plaintiff injured. In a claim for damages by the plaintiff against the widow of the driver under Law Reform (Miscellaneous Provisions) Act, 1934,

Held, that the plaintiff did not impliedly consent to or absolve the driver from liability for any subsequent negligence on his part whereby the plaintiff might suffer harm.

THE NORDBORG, (1939) P. 121.

Conversion—Shipowner and consignee—Consignee taking delivery of goods in excess of what was covered by bills of lading—If shipowner can claim value of the goods over-delivered.

Consignees under 11 bills of lading claimed against shipowners for short delivery of timber under 4 bills of lading. The shipowners counter-claimed the value of 362 pieces of timber not covered by the 11 bills of lading delivered to the consignees.

Held, consignees were not liable to shipowners in tort for conversion. As between shipowner and consignee whether by implication of law or by way of inference from facts, the acceptance by the latter of the over-plus of itself does not give the shipowner a right to anything more than the payment of additional freight.

BUSH *v.* BUSH, (1939) P. 142.

Divorce—Desertion—Pendency of previous petition for divorce—Effect on desertion.

It is impossible for a wife to allege that desertion continues during the period in which she herself is presenting a petition for dissolution on the charge of adultery.

GIBBS-SMITH *v.* GIBBS-SMITH, (1939) P. 170.

Desertion—Unserved petition for divorce—If suspends period of desertion.

There was desertion by the husband from July, 1932, subject only to the fact that on 27—8—1935 the wife filed a petition for divorce. The petition was not served and dismissed on 1—7—1938 on the wife's application. The question was whether or not the filing of that petition had the effect of suspending the desertion for three years which would otherwise have been completed.

Held, distinguishing *Marthews* v. *Marthews,* (1938) 4 All. E. R. 377 and *Walton* v. *Walton,* (1938) 4 All.E.R. 382, the mere filing of a petition not followed by service does not suspend the obligation between the spouses to cohabit and therefore it had not interrupted the desertion.

JACKSON *v.* JACKSON OTHERWISE PRUDOM, (1939) P. 172.

Matrimonial Causes Act, 1937, *S.* 7*—Respondent alleged to have been pregnant at the time of marriage not by the petitioner—Husband if precluded from giving evidence as to non-access before marriage.*

In a petition for decree of nullity alleging that the wife was pregnant at the time of the marriage by a person other than the petitioner,

Held, the husband may give evidence that he was not the father of a child conceived before marriage.

Rule in *Russel* v. *Russel,* (1924) A.C. 687, not applicable.

JOTTINGS AND CUTTINGS.

Our Young Judges.—"It is an unfortunate habit of Attorney-Generals", Sir Edward Clarke once jocularly observed at an annual meeting of the Bar, "to continue to fill for some time the place to which they had been appointed. All good Attorney-Generals, when they died officially, went either to the House of Lords or the Appeal Court. But they delayed going there."

Now the Law Officers have good cause for the delay. I know not whether you have observed it, but from the Law Lords downwards our superior judges are remarkably if not phenomenally young; there is not what you would call an old man amongst them. Not often in our island history has there been a time when a disappointed but reasonable man could not legitimately jeer at the senility, deafness or other doddering symptoms of at least one member of the highest judicial tribunal. But look at it now. The oldest in years of the Law Lords are Lords Romer and Atkin, very youthful people, aged 72 and 71 respectively, and the average age of the seven no more than 67. Humphreys, J., is the only one in the K.B., who has attained the age of 70—he is only 71. Asquith, J., is a stripling of 48. Not one of the L.Js. has 70 summers to his credit; Crossman, J., eldest of the Chancery Division, is only 68, seven years more than his nearest contemporary, Bennett, J. The President of the P.D. and A. Division is less than 60, and the oldest Judge in his Division is a young fellow of 63, Henn Collins, J. I say nothing of Hodson, J., aged 43 years.—*L.J., 1939, p. 239.*

Pre-War Appointments.—As touching appointments and promotions, I have before me an announcement made in March in the fourth year before the last war, as follows: "The King has been pleased to confer the dignity of a Baron of the United Kingdom upon the Right Hon. Sir John Charles Bigham, on the occasion of his resignation of the position of President of the Probate, Divorce and Admiralty Division of the High Court of Justice. His Majesty has also been pleased to approve the appointment of Sir Samuel Thomas Evans, K.C., to be President of the Probate, Divorce and Admiralty Division in the place of the Right Hon. Sir John Charles Bigham. The King has further been pleased to approve the appointment of Mr. Rufus Daniel Isaacs, K.C., to be Solicitor-General, in place of Sir Samuel Thomas Evans, K.C."

Therein are two examples of rapid transition or promotion which surprised the Bar of that day. Sir John, who became Lord Mersey, had been only a short time in the President's seat. According to a legal correspondent of that day he "had only just settled himself comfortably in his new saddle, and, to go on with, he was not ripe for a peerage, inasmuch as he had not served the 15 years which entitles an ex-judge to a pension". He had been appointed Judge

of the Q.B.D. in 1897, after sitting for two years as M.P. for the Exchange Division of Liverpool, and "he did a great deal of useful work in the Commercial Court and in the Railway and Canal Commission. Though there were those who criticised the rapidity of his methods, nobody was surprised when, shortly before the resignation of Sir Gorell Barnes, he was invited to sit in the Court of Appeal as the temporary colleague of the Lords Justices".—*L J., 1939, p. 239.*

When Lord Reading Recame S.G.—"But when Sir John Bigham succeeded to the Presidency", it was written, "the profession was frankly astonished. His experience and his temperament did not appear to qualify him for his new position. During the short time he has sat in the P.D. and A. Division he has, however, proved himself strong, adaptable and a man of strong common sense". His retirement was due to ill-health, and on that ground he received the full judicial pension.

The promotion of Sir Samuel Evans to the Presidency was regarded as more remarkable. "A first-rate Parliamentarian, he was never in that charmed circle of advocates, one or all of whom are retained when a *cause celebre* is in the making. Such London business as he had in the Courts was mostly in connection with labour disputes, trades unions and the like work, that is to say, of Welsh origin. Had it been necessary for him to return to the Bar he would doubtless have figured in the society and sensational cases that the public loves; most law officers do so. But he would have had to win his spurs. And he will have to win them in the Probate, Divorce and Admiralty Division, for he knows as little of divorce as did Sir John Bigham, and as little of Admiralty as did Sir Bargrave Deane".

Over the promotion of Mr. Rufus Isaacs there was "nothing but rejoicing. For many years he has held a unique position at the Bar. With none of the glory which hedges a former law officer, he has more than held his own with all comers, and his professional income has probably been larger than that of any practitioner of modern times. As a forensic speaker and as the arguer of a point of law he has no superior; and there is no branch of litigation with which he is not familiar".—*L.J., 1939, p. 240.*

Juries must be True.—Not the legal knowledge of Sir Gerald Dodson nor the intent of the words used by him in directing the jury in the case of *R.* v. *Mills* was the reason why the conviction in that case was quashed in the Court of Criminal Appeal. As the L.C.J. observed, there could be no doubt as to what the Recorder intended to convey to the jury, but he "had used one or two perilous phrases which might conceivably have caused some members of the jury to incline their minds to a wrong view". That judgment of Lord Hewart and his observations on the Importance of Real Agreement among Jurors will rank amongst others of his judgments as

one of the classics of our legal literature: a great principle greatly expressed. He said, *inter alia*. "It is fundamental that a jury should not be led, from a desire to acquiesce, or to avoid eccentricity, or to save time and trouble, to represent themselves as holding a view which they do not hold. Their verdict must be a true verdict given according to the evidence; not an untrue verdict according to someone's actual or supposed convenience".

Good stuff and true; indicating how the judicial words should be safe and sound and free from peril in any direction to any jury. But what worlds of speculation are left open as to how juries, however well-directed, do so often return a unanimous verdict. Can 12 men, or a mixed company of 12 men and women, ever or often agree about anything? There is a general feeling or belief that the twelfth man, or may be the eleventh and twelfth members, are rarely convinced, and that if the moral suasion of the majority were not overwhelming in its persuasiveness, re-trials would be far more numerous than they are. Still, that is matter for the jury, and we may not peep at the secret process whereby unanimity is so oft achieved.—*L.J., 1939, p. 240.*

Agreement and Feeding of Jurors in Olden Times.—When the 12 jury members of to-day are unable to agree upon their verdict they are discharged with no greater penalty than a sarcastic remark from the learned Judge. It was not ever thus. Time was when a refractory juryman was committed to prison and the verdict of the 11 was taken. It was in the reign of King Edward III that the judges decided that a majority verdict was a nullity, and recommended that the judges of assize should carry the jury about with them in a cart till they should agree.

The rule that jurors should go without meat or drink until a verdict was given is of remote antiquity; but in Tudor times it was relaxed to the extent that if a juror became faint for lack of food he might, by the assent of the justices, "have meat and drink and also such other things as may be necessary for him; and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree, or by the assent of the justices, may both eat and drink". By this means the spectacle, maddening to the starving 11, of a twelfth juror enjoying his victuals, was avoided.

In the days of Queen Elizabeth, according to Smith's *Commonwealth,* it was usual for the successful party to entertain the jury after the verdict had been recorded. "The party with whom they have given their sentence giveth the Enquest a dinner that day most commonly, and this is all they have for their labour".—*L.J., 1939, p. 240.*

Concerning Fees.—A story has come down to us from a past generation of an old member of the Profession who, when a friend

commented on the fact that he appeared to own a very large number of cats, explained that the reason was that he liked everything of the fe(e)line species. The joke may not have been very subtle, but it is a good-natured jest at the supposed penchant for fees which is said to be one of the characteristics of the legal Profession, but by no means confined to it. Milton, it may be remembered, in his Tractate on Education, comments severely on this failing, as he would call it, of lawyers by referring to those who are allured "to the trade of Law, grounding their purposes not on the prudent and heavenly contemplation of justice and equity which was never taught them, but on the promising and pleasing thoughts of litigious terms, fat contentions, and flowing fees". To be sure the great Puritan poet administered his reproofs all round, but this one, with its mouth-filling phrases, has every now and again been thrown at the heads of our Profession as marking them out as mercenary beyond others. As we all know. the love of fees, fat or lean—usually the latter in fact come—has been no monopoly of the legal Profession, but at the same time the subject of lawyers' remuneration at different epochs is one of considerable interest, and has engaged the attention of several of the older writers—Foss, among others, in his stately row of volumes, and John Cordy Jeaffreson, himself a member of the Bar, in his interesting work, A Book about Lawyers published some seventy years ago, but still making pleasant reading.—*L.T., 1939, p. 233.*

Variations in Money Value.—With regard to lawyers' fees, as with everything else, they were paid in the old days on a scale very different from that in more recent times owing to the divergent value of money prevailing. To take an example, we read that in the year 1500 the Corporation of Canterbury paid for advice regarding their civic interests 3*s.* 4*d.* to each of three serjeants, and 6*s.* 8*d.* to the Recorder of London as a retaining fee. In 1505 the Goldsmiths' Company paid Serjeant Wood a fee of 10*s.*, and apparently this was regarded as a fairly reasonable fee at that date. According to one writer it was customary during the sixteenth century for clients to provide food and drink as well as fees for their counsel. Foss preserves the following items from an old bill of costs: "For a breakfast at Westminster spent on our counsel, 1*s.* 6*d.*"; and "To another time for boat hire in and out, and a breakfast for two days, 1*s.* 6*d.*" Breakfasts were obviously very moderate in price in those far-off days, a fact which is also borne out by an entry in the parish books of St. Margarets, Westminster, which contain this item: "Also paid to Roger Fylpott, learned in the law, for his counsel given, 3*s.* 8*d.*, with 4*d.* for his dinner."—*L.T., 1939, p. 233.*

An Upward Tendency.—In the reign of Elizabeth it is said that there was a tendency for counsel's fees to be paid on a more generous scale than those paid during the reign of her father, but the rise was

by no means extravagant. A fee of 20*s*. was more generally paid than theretofore, but even under the Virgin Queen 10*s*. was not thought too small a sum for an opinion given by the Solicitor-General; and, indeed, this was still a very common fee, a circumstance which led to the saying that "a barrister is like Balaam's ass, only speaking when he sees the angel", the angel being the name popularly given to the coin of 10*s*., from the fact thtt it showed Michael piercing the dragon. A little later the Chancery practitioners were encouraged by an ordinance passed by the Lords Commissioners regulating the conduct of suits and the payments to Masters, counsel and solicitors, which, *inter alia*, provided that on the hearing of a cause utter barristers should receive £1 fees, whilst the Lord Protector's counsel and Serjeants-at-Law should be paid £2 fees.—*L.T., 1939, p. 233.*

Bacon's Income.—When Bacon was Attorney-General, a post which yielded him the small salary of £81 6*s*. 8*d*., he is said to have made no less than £6,000, the greater part consisting of fees paid to him for attending to the King's business. "I shall now", he wrote to the King, "again make oblation to your Majesty—first of my heart, then of my service; thirdly, of my place of Attorney, which I think is honestly worth £6,000 per annum; and, fourthly, of my place in the Star Chamber, which is worth £1,600 per annum, and with the favour and countenance of a Chancellor, much more". Bacon's contemporary, Coke, is said to have made a still larger income during his tenure of the post of Attorney-General, the fees drawn by him during one year reaching no less a figure than £7,000. It will, of course, be remembered that at that time, and, indeed, till comparatively recent days, the law officers were not debarred, as they are now, from acting for private litigants, and the mere fact that they were law officers gave them a status in the opinion of litigants which otherwise they might not have enjoyed. At all events for many centuries the Attorney-General and the Solicitor-General made large incomes when their official salaries and their private practice were conjoined.—*L.T., 1939, p. 233.*

Lord Eldon's Receipts.—"When I was called to the Bar," wrote that eminent lawyer, "Bessie—his wife—and I thought all our troubles were over, business was to pour in, and we were to be rich almost immediately. So I made a bargain with her that during the following year all the money I should receive in the first eleven months should be mine, and whatever I should get in the twelfth month should be hers. That was our agreement, and how do you think it turned out? In the twelfth month I received half-a-guinea—eighteen pence went for charity, and Bessie got nine shillings. In the other eleven months I got not one shilling." This picturesque story would appear to have had little to support its accuracy save the language of the future Chancellor himself, and it was not borne out by a letter written by

his brother William, afterwards Lord Stowell, who told his other brother in the same year that the future Lord Elden after his call to the Bar "seems highly pleased with his circuit success. I hope it is only the beginning of future triumphs. All appearances speak strongly in his favour". In 1786, that is, ten years after his call, his fee book showed the receipt of no less than £6,833 7*s*., and in the following years this sum was greatly increased, in 1797 reaching £10,557, and even that had been exceeded in one or two of the intervening years.—*L.T., 1939, p. 234.*

Murray and His Retainer.—Lawyers are generally credited, or should we rather say debited, with looking after their fees with a keen scrutiny, but that they are also disinterested has been established time and again. One conspicuous instance is furnished by the career at the Bar of William Murray, whom we best remember by his judicial title of Lord Mansfield. It is said that he numbered among his clients that very notable lady, Sarah, Duchess of Marlborough, who had various suits going on in the Court of Chancery relating to the trusts or her husband's will. Murray was to be briefed, and the Duchess, desirous of stimulating his zeal in her favour, sent him a general retainer with a 1,000 guineas. Immediately he returned 995 guineas with an intimation that the "professional fee, with a general retainer, could neither be less nor more than 5 guineas." It is said that she was a very troublesome client, calling at his chambers at very unseasonable hours, so it would seem he had to work very hard for the fees sent him on her behalf. But this we may say of him, as of his successors in leading practice at the Bar, that they always gave of their best to those for whom they were instructed. Even small fees have evoked sturdy forensic energy. A generation ago a member of the junior Bar was so noted for his opulent style of oratory and for the vigour of his advocacy as to call forth the opinion of one of his contemporaries that he would "tear up the floor for three and one".—*L.T., 1939, p. 234.*

Westminster Hall.—The striking and impressive scene in Westminster Hall last week, when the President of the French Republic and the members of the two Houses of Parliament exchanged the heartiest of greetings within its historic walls, thus demonstrated once again the solidarity of the *entente* between France and England, especially in these days of anxiety in international relationships. The meeting could have had no fitter setting than in the venerable hall which, by its impressive stateliness, symbolises the basis of all well-ordered society—law and order. To lawyers in particular the scene must have revived memories of the days when the hall was the very centre of the legal life of the nation. It was the scene of many historic trials, among others that of Waren Hastings, a circumstance which afforded Macaulay the opportunity of embodying in his famous

essay a purple patch descriptive of the wealth of memories that cluster round its walls. But, apart from these great historic occasions, lawyers like to recall the Hall as the very hub of their professional life. Its interior must have had an inviting appearance in the old days with its crowds walking up and down, eager to witness the trial of cases in the adjoining courts. Especially on the opening of term it must have presented a particularly animated spectacle. We are told that to receive the judges at the opening of term the Serjeants took up their position on the west side of the hall immediately before their court. There, standing in single file, with their faces towards the east wall, they awaited the arrival of the judges, first the Lord Chancellor and then the others in order of seniority. On coming up to the Serjeants the Chancellor shook each of them by the hand, saying, as he did so, "How d'ye do, brother? I wish you a good term." Having thus greeted each wearer of the coif, his lordship, attended by his officers, passed on to the Chancery at the southern end of the hall. In like manner each judge greeted each Serjeant, and then passed each to his own court. It would appear also that at one time a brisk business was carried on in the hall by the sempstresses who manufactured bands and cuffs, lace ruffles and lawn kerchiefs for the grave counsellors and the young gallants of the Inns of Court. The great hall of the present Law Courts, impressive though it is in some respects, is, after all, a poor substitute for the ancient and historic hall at Westminster, which filled so dignified a place in the legal life of London. As one writer some years ago pointed out, when he visited the Law Courts hall, it appeared to be tenanted only by one messenger boy. A change, indeed, from the animation which we associate with Westminster Hall!—*S.J., 1939, p. 245.*

Judicial Committee of the Privy Council: Preparation of Cases.—On Monday, Lord Atkin, when presiding over the First Division of the Judicial Committee of the Privy Council, made reference to the importance of the correct preparation of cases in appeals to the Board. Attention was drawn to Rule 63 of the Judicial Committee Rules, 1923, which provides that the case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. According to the note on the matter in *The Times,* the learned lord said it was very important that appellants should remember what the rule was. Their Lordships attached considerable importance to those cases, and they expected to have them prepared in accordance with the rules so as to give their Lordships the necessary assistance.—*S.J., 1939, p. 245.*

Sauce for the Gander.—An ex-convict, turned Sunday newspaper journalist, recently made a striking contribution to the contro-

versy about the abolition of flogging "in the name of the lash-tortured thousands." He suggested that the six judges who advocate the "mediæval cruelty" of the "cat" should try three strokes each, magnanimously declaring that if they consented he would take seventy-two. The picturesqueness of the ceremony, presumably to take place in the Central Hall of the Royal Courts of Justice, would eclipse the occasion when Henry II did penance under the lash at Canterbury. It might be made an annual affair. Still, despite the satisfying poetic justice of seeing a gunnerhoist with his own petard, one may doubt whether it is practical or necessary to demand that no surgeon should be allowed to perform an operation until he has had a limb or so amputated or that airmen should begin by blowing themselves up with their own bombs.—*S.J., 1939, p. 274.*

Experiment in Punishment.—Still the idea is not altogether new. Mr. Justice Day at Leeds once took a spell on the treadmill and found it so trying that he afterwards said to the warder: "If it is your custom to carry your duty so far as this, I shall have to reduce my sentences." A few years ago a newly appointed Pittsburgh judge sent himself to prison for three days so as to learn the environment and general routine of a gaol. There is a tradition at one of the great Jesuit schools that a former lawyer, on being appointed to the staff after abandoning his profession for the priesthood, insisted on receiving several strokes of the "ferula" (an instrument of punishment applied to the hands of the boys) so as to enable him to estimate its severity. Sir Miles Fleetwood, Recorder of London in the time of James I, once involuntarily went through the experience of awaiting immediate execution, for some highwaymen waylaid him near Tyburn as he was riding down to Buckinghamshire, tied his hands behind him and left him with a halter suspended from the gallows fast round his neck, so that if his horse had moved he would have been hanged, but fortunately the faithful beast stood still.—*S.J., 1939, p. 274.*

BOOK REVIEWS.

THE CODE OF CRIMINAL PROCEDURE, by Mr. S. Ranganadha Aiyar, Advocate, Madras High Court. Sixth Edition. Price Rs. 20, Postage Extra.

We acknowledge with pleasure the receipt of this new edition of "The Code of Criminal Procedure" by Mr. S. Ranganadha Aiyar. The present edition has been revised on the same lines as the previous editions. In some places the book has been re-written in the light of the more recent decisions under the Code. All the amendments up-to-date have been incorporated including those made by the Government of India (Adaptation of Indian Laws) Order, 1937. A bare text of the Code has also been printed in the beginning of the book

for ready reference. The case-law has been brought down to March, 1939. The cross references to the All India Reporter, which is a new feature of this edition, will be found very useful by the practitioner. We have no doubt that this edition will fully maintain the reputation of its predecessors as a recognised text-book on the subject.

FEDERATION *versus* FREEDOM, by B. R. Ambedkar, M.A., P.H.D., D.SC., M.L.A., J.P., Barrister-at-Law, Price Re. 1. Published by Messrs. R. K. Tatris, at Shree Laxmi Narayan Press, 364, Thakurdwar, Bombay 2.

Under the auspices of the Gokhale Institute of Politics and Economics, Dr. Ambedkar delivered an address on 29th January, 1939, the contents of which have been published in the form of a tract. Nothing is more of topical interest than the Government of India Act, 1935, for one who wishes to speak on any constitutional problem connected with India to-day. Apart from the merit of selection of a subject like this, the address, coming as it does from one, who was a delegate to the Round Table Conference, the outcome of whose efforts was the Government of India Act itself, cannot fail to attract sufficient attention from lawyers and politicians.

The structure of the Federal scheme as envisaged in the Government of India Act has received the best scrutiny from the author, and there can be no two opinions as to the thorough familiarity with the subject that the entire address discloses. The defects of the Act pertaining to the All-India Federation are mainly dwelt upon in a short compass. As regards the utter impracticability of a Federal scheme as conceived by the Act, the scathing criticism found in these pages will convince any reader of the futility of such a scheme and the frustration of hopes entertained by politicians and statesmen engaged in the fight for our freedom, not to speak of the bewilderment of students of Constitutional Law at the strange type of a federation without either precedent or prevision. While we appreciate the strong case made out against an All-India Federation necessarily including some of the backward States also, which would mean, according to the author, a permanent devitalising influence upon our freedom, there has been no real solution mentioned, except the statement that "the wisest course seems to me that leaving the states where they are, British India should proceed on its own evolution and Federation for itself" (p. 144). How far such a view will commend itself to the maturer statesmen of this country, we feel grave doubts about. But at the same time, one feels some justification in the point of view urged by the author for the retention of such of the states in whose case, by measure of area and revenue the position to provide a decent state of administration is ensured, and for the abolition of the rest that have very negligible resources at their command. Indeed, he supports the proposal for

the creation of new Provinces with the dismembered units and remnants of such states, which prove an obstacle in the way of a real Indian Federation. The many other handicaps for an efficient working of the Federation are enumerated in every one of the ten chapters composing the address.

The address, on the whole, contains vigorous thinking and plain speaking. But strangely enough the author is betrayed into bitternesses born of his own personal differences in politics. His references to the Congress and its accredited leader Mahatma Gandhi are not free from prejudices. For instance, the sentence "No man has brought greater disasters to the interests of India than did Mr. Gandhi at the Round Table Conference" (p. 151), and the statement that "it is surprising that congressmen should have become so enamoured of the prospect of seizing political power that their demands against the British Government did not even contain a declaration from the British Government in this behalf" (p. 113), are not only not convincing but may even detract us from a correct estimate of an otherwise able criticism of the Government of India Act.

We cannot close this small volume without a feeling of thankfulness to the author for his clear enunciation of the outlines of the Federal Scheme in the Act and his relevant comments on the baffling anomalies contained in some of the sections.

THE LAW OF PUBLIC HEALTH IN MADRAS PROVINCE, by Mr. C. V. Naidu, Advocate, Madras High Court (1st Edition). Published by Rajeswari & Co., Tiruvallur (M. & S.M.Ry.). Price Rs. 5 net.

The Madras Public Health Act which has recently been passed by the Madras Legislature is a comprehensive enactment of a beneficial nature dealing with all aspects of public health. The subject of the enactment has been under the consideration of the Government and its advisers for several years and its provisions have been scrutinized and revised by the Director of Public Health. Though it was originally proposed only to make suitable additions and amendments in this behalf in the Madras City Municipal Act, the Madras District Municipalities Act and the Madras Local Boards Act, that idea was subsequently dropped and a comprehensive enactment dealing with all aspects of public health has been undertaken and passed. Mr. C. V. Naidu who is already familiar to us as the author of the Law of Madras Local Boards and the commentaries on the Indian Elections Offences and Inquiries Act has brought out a commentary on this Act which is not only explanatory of its provisions but also analytical and critical in its nature. He has also dealt with the Madras Prevention of Adulteration Act and the Public Places Resort Act and also given the rules made thereunder. We

have no doubt that the commentary will be found useful for all those who have to deal with the subject.

THE MADRAS PUBLIC HEALTH ACT (Act III of 1939), by Mr. C. R. Krishna Rao, B.A., B.L., Advocate, Madras and Reporter, "All India Reporter". Published by V. S. N. Chari & Co., Madras. Price Rs. 2.

This attractive little book gives the provisions of the Madras Public Health Act with notes under the sections and the corresponding references to the other enactments on which the sections are based. The notes under the sections which are brief, explain the principle underlying the sections and give other useful information leading to a correct understanding of the sections. Important English and Indian decisions bearing on the analogous provisions of other similar enactments are also given and their applicability to the provisions of the Act has been considered. As the enactment is a recent one, there can be no case-law under it to elucidate its provisions. The learned author has therefore reproduced the statements of objects of the bill and the Select Committee's Report which will throw considerable light on the provisions of the Act though they may not be useful in a Court of Law for construing the enactment. We believe that the book will be found useful for all those having to deal with the subject.

THE CHILD MARRIAGE RESTRAINT ACT, by Messrs. Tek Chand, M.A., B.C.L. (Oxon), Barrister-at-Law, Advocate, High, Court, Lahore and H. L. Sarin, Advocate, High Court, Lahore. Published by The Eastern Law House, Calcutta. Price Rs. 2-8.

This piece of legislation evoked a great deal of controversy at the time of its first enactment in 1929 but the provisions of the Act have come to stay and they have still further been tightened by providing for remedies in Civil Courts against the infringement of its provisions and by penalising marriages celebrated outside the territorial limits of British India by the provisions of the amending Acts of 1938. The book under review has incorporated the amendments and noticed all the cases bearing upon the enactment up-to-date. He has also made suggestions for further legislation towards the end of the introduction to this book, the first of which is to declare marriages in contravention of the Act invalid. This aspect of the matter was considered fully in 1929 and it was realised that the consequence of rendering such marriages are invalid would be disastrous both from the legal and social point of view. We are not sure that in repeating that suggestion the learned authors' enthusiasm has not overrun their discretion.

THE INDIAN INCOME-TAX ACT (AS AMENDED BY ACT VII OF 1939), by M. B. R. Jain (II Edition), 1939. Published by The Income-tax Law Publishing House, Delhi. Price Rs. 10.

The Income-tax Law in this country has been recast by the recent amending Act which has introduced sweeping changes in very material respects that the learned author has found it necessary to bring out a second edition of his book within two years of the first. The recent amendments embody many of the suggestions made by the Expert Committee appointed by the Government of India to enquire into and report on the working of the Income-tax Law. The learned author has noticed the changes effected in the Act and their effect. He has deleted references to the decisions which have become obsolete by reason of the amendments but has retained those which have still validity. He has also given extracts from the Enquiry Committee's report and the proceedings of the legislature which will be found useful. We have every hope that this commentary on the Indian Income-tax Act as amended up-to-date will be found useful by all those having to do with the Income-tax Law and practice.

THE PROVINCIAL INSOLVENCY ACT, by Rameshwardial, B.A. (HONS.), LL.B., P.C.S., with a Foreword by The Hon'ble Mr. Justice J. H. Monroe, High Court, Lahore. Published by University Book Agency, Law Publishers, Kutchery Road, Lahore. First Edition. Price Rs. 9.

This is the latest commentary on the Provincial Insolvency Act, an enactment in which there is an ever increasing mass of the case-law. The growth of case-law under the Act may be judged from the number of cases included in the addenda of the work which give the cases that appeared since the book went to print. An up-to-date commentary on such an enactment is therefore particularly useful. The notes under the sections are full and no case of any importance has been omitted. The rules made by the various High Courts under the Act are given towards the end of the book. There is also a comparative table at the opening of the book which indicates the corresponding sections of the previous Provincial Insolvency Act, the Presidency Towns Insolvency Act and the English Bankruptcy Acts. The Index at the end is exhaustive. From what has been said by us, it will be agreed that the book will be found useful to all those having to deal with the subject.

THE LAW OF CIVIL APPEAL AND REVISION, by K. N. Bhaumik, B.L. Published by Messrs. Eastern Law House Calcutta, 1939. Price Rs. 5.

In this book the learned author has dealt with all the points of law and practice which are likely to arise on the subjects of Civil Appeals and Revisions. They are all scattered in a number of enactments and decisions. The relevant provisions of the Civil Procedure Code are given in the opening with the local amendments if any. Then the subject is dealt with in the various chapters in their natural

order and not by way of commentaries to the enactments. Each chapter deals with a distinct subject in all its aspects. The relevant decisions are all noticed and considered fully in their proper places with appropriate marginal references. At the end are given the Appellate Side Rules of the several High Courts and the Letters Patent, the Rules of the Federal Court and the forms. The book will be found useful in solving many of the difficult questions which are likely to arise in civil appeals and revisions. We hope that the learning contained in the book will be largely availed of by the bench and the bar.

[END OF VOLUME]